

**DOCKET NO.:** ISIS-4502  
**Application No.:** 08/078,768  
**Office Action Dated:** September 15, 2004

### **REMARKS**

The Examiner has ruled the substitute Appeal Brief filed July 8, 2004 to be defective, stating that it refers to patents that are not of record. It is admitted by the Examiner that the patents are not cited directly. Rather, they are alluded to by way of reference to the Orange Book promulgated by the U.S. Food and Drug Administration. Appellant believes the citation of the Orange Book to be entirely proper as the same is for the purpose of apprising the Board of Patent Appeals and Interferences of the **existence** of the patents covering fomivirsen and **not for their content**.

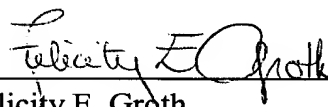
As the application will be determined to have been abandoned if the Examiner's requirements are not met by the Appellant, a second substitute Appeal Brief accompanies this paper with the language at issue deleted. At the same time, however, a petition under 37 C.F.R. § 1.181 is being filed to challenge the Examiner's holding of noncompliance. If the petition is granted, it is expected that the Board will act upon the Appeal Brief of July 8, 2004.

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As this responds to the objection raised, the Appeal Brief is believed to be fully conforming with rule and statute and is in condition for consideration by the Examiner and response thereto. If the Examiner believes a telephone conference would expedite resolution of the issues on appeal, the undersigned may be contacted at 215-568-3100.

Respectfully submitted,

Date: October 18, 2004

  
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Enclosure: Substitute Appeal Brief